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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/018,473	12/19/2001	Thomas Heitz	50089	8131
26474	7590	01/30/2004	EXAMINER	
<b>KEIL &amp; WEINKAUF</b> 1350 CONNECTICUT AVENUE, N.W. WASHINGTON, DC 20036				OH, TAYLOR V
ART UNIT		PAPER NUMBER		
		1625		
DATE MAILED: 01/30/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/018,473	HEITZ ET AL..PN.	

  

<b>Examiner</b>	<b>Art Unit</b>
Taylor Victor Oh	1625

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 31 December 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a)  The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1.  A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2.  The proposed amendment(s) will not be entered because:
  - (a)  they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b)  they raise the issue of new matter (see Note below);
  - (c)  they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d)  they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5.  The a) affidavit, b) exhibit, or c) request for reconsideration has been considered but does NOT place the application in condition for allowance because: see pages 2-3.
6.  The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7.  For purposes of Appeal, the proposed amendment(s) a) will not be entered or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-10.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8.  The drawing correction filed on \_\_\_\_\_ is a) approved or b) disapproved by the Examiner.

9.  Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.

10.  Other: \_\_\_\_\_

It is noted that applicants have filed an Amendment after the Final Rejection; applicants' attorney has addressed the issues of record or rebutted the claim rejections under 35 USC 112 by the amendment. However, The rejection of Claims 1-10 under 35 U.S.C. 103(a) as being unpatentable over Braune (U.S. 5,854,377) is maintained with the reasons of the record on 10/22/2003.

Applicants argue the followings:

1. the teaching of the Braune prior art not only fails to suggest that the temperature in the esterification reactor cascade does not increase, it also contains nothing which implies the adaptation of the temperature to the esterification reactor ,which will have an impact on the amount of unwanted by- product.
2. the examiner fails to consider applicants invention as a whole as required in a proper determination under section 103.

The applicants' argument have been noted, but these arguments are not persuasive.

First, regarding the first and second arguments, the Examiner has noted applicants' argument. However, Braune does disclose that the temperature of a subsequent zone should be 1-40<sup>0</sup> C. higher than that of the preceding zone (see col. 1 ,lines 64-67); this passage implies that the 1 degree temperature difference is allowable

for the esterification stage (a) along the reactor cascade. In other words, there is little difference as to conducting the actual reaction process regardless of the slight reaction temperature variations. Furthermore, under the 103 rejection , the Examiner compares the current invention with the prior art as to how similar they are to each other; in that respect, there is no patentable weight with this limitation over the prior art in the absence of an unexpected result. Moreover, regarding the adapting temperature to the esterification reactor that will have an impact on the amount of unwanted by- product, applicants did not claim the reduction of the amount of unwanted by- product as a result of the process. It is the PTO's policy that applicants are only protected by what they claimed in the invention, not what they described in the specification. Therefore, in this respect, applicants' argument is irrelevant.

Therefore, the rejection is maintained.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Taylor Victor Oh whose telephone number is 703-305-0809. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alan Rotman can be reached on 703-308-4698. The fax phone number for the organization where this application or proceeding is assigned is 703-308-2742.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.

Margaret Seaman  
11/21/04

  
MARGARET SEAMAN  
PRIMARY EXAMINER